

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

ILLINOIS COMMERCE COMMISSION)	
On Its Own Motion)	
)	
Investigation into the Customer)	15-0073
Authorization Required for Access by Third)	
Parties Other than Retail Electric Suppliers)	
To Advanced Metering Infrastructure Interval)	
Meter Data)	

NOTICE OF FILING

TO: Attached Service List

Please take note that on March 9, 2015 the undersigned has caused to be filed via e-Docket with the Clerk of the Illinois Commerce Commission, 527 E. Capitol Ave., Springfield, Illinois 62701, the Verified Initial Comments of Commonwealth Edison Company in the above-captioned proceeding.

Respectfully submitted,

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**VERIFIED INITIAL COMMENTS OF
COMMONWEALTH EDISON COMPANY**

Commonwealth Edison Company ("ComEd") submits these Verified Initial Comments ("Initial Comments") on the Illinois Commerce Commission's (the "Commission" or "ICC") investigation into the need for, and form of, customer authorization required for access by third parties, other than Retail Electric Suppliers ("RESs"), to Advanced Metering Infrastructure ("AMI") interval meter data. These Initial Comments are verified by Robert Garcia, who is competent to testify as to the facts to which he attests.

ComEd appreciates the opportunity to comment on and participate in the development of this important issue and supports the efforts of the Commission, Commission Staff ("Staff"), and all parties to this proceeding to create clear and streamlined customer authorization language and processes that can be implemented by the utilities and third parties, while at the same time ensuring that customers receive appropriate disclosures and are reasonably protected against disclosures based on fraudulent consent. ComEd is submitting these Initial Comments using the format suggested in the "Proposed Comment Outline Concerning Customer Authorization Language of the Citizens Utility Board" ("CUB" and "Comment Outline"), which was circulated to all parties to this proceeding on February 18, 2015.

I. The Need for Commission Direction on Customer Authorization

In its January 28, 2015 Order Initiating Proceeding (“Initiating Order”), the Commission states that parties to this proceeding should explore “the need for a standard customer authorization form required for access to AMI interval meter data by third parties other than RES... and the need for Commission approval of a customer authorization form.”¹

This proceeding is not the first to explore these important issues; they have been associated with the deployment of AMI,² Net Metering,³ Peak-Time Rebate Programs⁴ and certain rate design filings. Utilities encountered a flurry of requests to provide customer-specific information to RES and non-RES third parties, potentially in conflict with Sections 16-122 and 16-108.6 of the Public Utilities Act (“PUA” or the “Act”).

The Commission opened Docket 13-0506 (“Privacy Docket”) to investigate the applicability of the Act and examined a number of topics, including the release of aggregated, anonymous customer billing and usage information, and the release of individual and customer-specific information to RESs. In its January 28, 2014 Final Order in the Privacy Docket (“January 28 Order”) the Commission stated that possession of a customer account number and/or a customer supply contract, alone, are not sufficient to meet the customer authorization requirements of Sections 16-122 and 16-108.6 to access “highly detailed AMI-enabled data.”⁵ The Commission further ordered the parties to “come together to discuss the proper method for a RES to show to the utility that it has obtained the required customer authorization. ... Whatever method is agreed upon, it must be clear that the responsibility to obtain these customer

¹ Initiating Order at 2.

² Docket Nos. 12-0298, 13-0285 and 14-0212.

³ Docket No. 14-0135.

⁴ Docket No. 12-0484.

⁵ January 28 Order at 27.

authorizations rests solely with the RES, and that the RES should be required to separately and affirmatively acknowledge to the utility that it has proper customer authorization.”⁶

Consistent with this directive, the parties met in a series of workshops concluding with Staff filing a Report to the Commission on November 6, 2014, which recommended the Commission open a proceeding to consider its proposed customer authorization language. The Commission initiated Docket No. 14-0701 (“RES Authorization Proceeding”) to resolve questions concerning authorization by customers of access to their interval usage data for non-billing purposes by RES. The parties submitted initial and reply comments; surreply comments were waived in favor of expediting the process towards a Commission decision. The Administrative Law Judge issued his proposed order on March 2, 2015, in which he recommended, among other things, the customer authorization language approved in the RES Authorization Proceeding be (i) standardized so as to relieve the utilities of the responsibility of interpreting the scope of consent obtained by the RES; and (ii) presented to the customer in a document (or screen) separate from any other contractual, marketing or informational materials.

On January 28, 2015, the Commission initiated the present proceeding to separately address “the need for and the form of any customer authorization required for access by third parties as agents of customers, *other than RES*, to AMI interval meter data.”⁷

The Commission should approve and direct the use of standard customer authorization language required to access AMI interval meter data by third parties other than RES. Only through mandating the use of the same language and process by all non-RES third parties can we ensure that every customer receives the same disclosures, designed to lead to the type of informed consent necessary to address important privacy concerns associated with AMI interval meter data. Optional or non-standard authorization language will, at best, lead to customer

⁶ *Id.*

⁷ Initiating Order at 1 (emphasis added).

confusion and, at worst, cause uninformed consent based on inadequate disclosure of information.

This proceeding, with interested stakeholders taking active roles in the development of the appropriate format, language, and process of non-RES third party authorization to customer AMI interval meter data, is the appropriate place for the Commission to decide and rule upon these issues.

II. Guiding Principles

Valid authorization needs to be consistent with the Fair Information Practice Principles (“FIPPs”) of (i) notice, (ii) choice/consent, and (iii) access. These principles have been at the core of consumer privacy protection for decades. Indeed, the United States Department of Health, Education and Welfare first implemented the FIPPs as a set of aspirational privacy guidelines in the early 1970s. Today, many privacy laws in the United States and around the world center on and integrate FIPPs. The five key elements that have emerged as being at the core of informed consent in the context of AMI data are:

- (1) A specific description of the information to which access is being authorized;
- (2) A statement of the purpose for which the information to be disclosed may be used;
- (3) The time period for the data to be disclosed, *i.e.*, historical (what period of time);
- (4) A specific identification of to whom access is authorized; and
- (5) The period of time for which the authorization is valid; or, lacking such a period, a description of how authorization may be withdrawn or cancelled.

ComEd believes these five elements should serve as guiding principles that can be used by the ICC and parties to this proceeding to evaluate options on authorization language, format, and process.

Additionally, in January 2015, the U.S. Department of Energy (“DOE”) released a Voluntary Code of Conduct (“VCC”) for adoption by both utilities and third parties with respect to Data Privacy and the Smart Grid. The VCC is largely based on the FIPPS, and is relevant in the present case because it emphasizes encouraging innovation, while protecting customer data as private and confidential. The VCC contemplates that with respect to the sharing of customer data for “Secondary Purposes”⁸ the customer would control access to their data by a “customer consent process” that includes ten enumerated “functional characteristics” including that the process “requires the customer’s consent for disclosure of Customer Data for Secondary Purposes to be specifically and affirmatively expressed before data is shared with Third Parties.”⁹ Another of the ten characteristics is that the process “[i]s efficient. The business processes supporting consumer choice and consent should be cost-efficient and utilize standard formats.”¹⁰

III. Authorization Language

The Commission should approve and direct the use of the same language here as it decides upon in the RES Authorization Proceeding with only minor adjustments to reflect the different status of RES and non-RES third parties and, where technically possible, the purpose(s) for which the party (whether RES or non-RES third party) seeks to use the data. Customer education and awareness is the key to a successful authorization process. Indeed, as explained further below, ComEd believes that the authorization should be given directly by the customer to

⁸ The VCC defines “Secondary Purpose” as “The use of Account Data and [customer energy usage data (“CEUD”)] that is materially different from the Primary Purpose and is not reasonably expected by the customer relative to the transactions or ongoing services provided to the customer by the Service Provider or their contracted agent.” VCC at Key Definitions. “Primary Purpose” is defined as “The use of Account Data or CEUD that is reasonably expected by the customer: (1) to provide or reliably maintain customer-initiated service; and (2) including compatible uses in features and services to the customer that do not materially change reasonable expectations of customer control and third party data sharing.” *Id.*

⁹ VCC at Section 2 (e).

¹⁰ VCC at Section 2 (j).

the utility. To avoid the utility receiving unclear, complex, or otherwise non-standard authorizations from customers, however, the use of a consistent format is of paramount importance.

Regarding the actual language used in the authorization, as ComEd has been advocating in the RES Authorization Proceeding and as stated above, a key element of informed customer consent to authorizing release of AMI interval meter data is a statement of the purpose for which the information to be disclosed may be used. Indeed Section 16-108.6 of the PUA already includes a “purpose” based restriction and provides, in part,

The AMI Plan shall secure the privacy of the customer's personal information. "Personal information" for this purpose consists of the customer's name, address, telephone number, and other personally identifying information, as well as information about the customer's electric usage. *Electric utilities, their contractors or agents, and any third party who comes into possession of such personal information by virtue of working on Smart Grid technology shall not disclose such personal information to be used in mailing lists or to be used for other commercial purposes not reasonably related to the conduct of the utility's business.* Electric utilities shall comply with the consumer privacy requirements of the Personal Information Protection Act.¹¹

While the authorization language applicable to RES has not yet been finalized or ruled upon by the Commission, ComEd hopes both in the RES Authorization Proceeding and here the Commission-approved authorization language will make clear to customers the purpose(s) for which they are allowing their data to be released. To this end, ComEd suggests the following “purpose” restrictions for non-RES third party authorization language:

[non-RES third party] will use the billing and usage data solely for the development and provision of current and future products in connection with electric supply service. [non-RES third party] will not disclose the billing and usage data to any other party for any

¹¹ 220 ILCS 5/16-108.6 (d) (emphasis added).

other purpose. [non-RES third party] will never sell the billing and usage data.

IV. Authorization Process

CUB's Comment Outline also included a discussion of the process by which a non-RES third party is to obtain customer authorization, including the means of proving that such authorization is authentic. The Comment Outline listed three potential options: (i) a warrant process whereby a third party signs a warrant, or affidavit, attesting to the fact that it has received appropriate authorization to receive a particular customer's usage data; (ii) a "one-time" process whereby a third party presents a separate, signed document, authorizing the party to have access to a customer's usage data; and (iii) an electronic "Green Button Connect" process whereby a customer directly authorizes the utility to release its usage data to a third party through a secure online process.

ComEd supports Option 3, with specific exceptions as noted below, and a process through which the customer provides authorization directly to the utility.

The PUA emphasizes at multiple points in Section 16-108.6 that utilities are required to ensure the privacy of a customer's AMI interval meter data.¹² That section also evidences a preference for a customer consenting to the release of its information through "electronic, web-based" means. This legislative intent is best implemented, in the case of non-RES third parties, by the utilities administering the process for the provision of customer authorization. Should the Commission agree, it would be ComEd's intention to use the DOE's "Green Button Connect" as a means to allow customers to directly release their data to third parties. As an alternative for

¹² See 220 ILCS 5/16-108.6 (c) ("The AMI Plan shall secure the privacy of personal information and establish the right of consumers to consent to the disclosure of personal energy information to third parties through electronic, web-based, and other means in accordance with State and federal law and regulations regarding consumer privacy and protection of consumer data."); 220 ILCS 5/16-108.6 (d) ("The AMI Plan shall secure the privacy of the customer's personal information... Electric utilities shall comply with the consumer privacy requirements of the Personal Information Act.").

customers who might not have access to the internet, ComEd will develop a standard, secure process whereby customers, upon appropriate verification, would be able to authorize ComEd to release their information to third parties over the telephone by contacting ComEd.

Registration for an account in the Green Button system would require the customer to present certain confidential information, and to then establish an online identification (“ID”) along with a password, which would be used for accessing the site. Once in the system, customers would be presented with a drop-down menu of the non-RES third parties that have self-registered with the utility to be included in the system. The customer would then select the non-RES third parties to which the customer authorized release of historical and/or going-forward billing and usage data. The Green Button system would not allow indirect customer authorizations from non-RES third parties on behalf of customers, as such a process is not consistent with the legislative intent embodied in Section 16-108.6.

ComEd believes that Option 3 and the Green Button system would also allow utilities to more readily align with the DOE’s Voluntary Code of Conduct, whereas an indirect process, such as is proposed by Options 1 and 2 in the CUB’s Comment Outline, would not. The VCC adheres to the FIPPs discussed above, and specifically sets forth certain functional characteristics of the customer consent process for the release of customer energy usage data.¹³ One of those characteristics is that the process “[i]s secure so that the customer is reasonably protected against disclosures based on fraudulent consent.”¹⁴ A RES is a quasi-regulated entity; but with an unregulated, unknown third party, a warrant, or other indirect, process provides no security against a third party who may fraudulently warrant or represent to the utility that consent has been received from the customer.

¹³ See VCC at Section 2.

¹⁴ VCC at Section 2 (g).

ComEd does not support Options 1 and 2 above. The guidance provided by the VCC is very specific on the issue of disclosures of customer energy usage data to third parties: it requires that the customer's consent to such a disclosure be "specifically and affirmatively expressed before data is shared with Third Parties."¹⁵ More importantly, the VCC advises that such process be "secure so that the customer is reasonably protected against disclosures based on fraudulent consent." ComEd believes that alignment with these guidelines would be precluded by the use of warrant by a third party, or any other process that interjects a non-RES third party between the utility and its customer.

Accordingly, ComEd supports Option 3 and the development of a customer-initiated, secure authorization process for the release of customer AMI interval meter data to non-RES third parties.

Dated this 9th day of March, 2015.

Respectfully submitted,

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¹⁵ VCC at Section 2 (e).

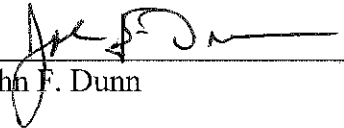
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VERIFICATION

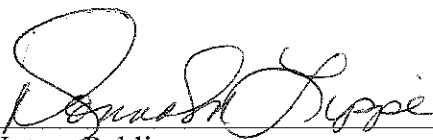
I, John F. Dunn, an attorney for Commonwealth Edison Company, being sworn on oath, hereby state that the facts in the foregoing *Verified Initial Comments of Commonwealth Edison Company* are true and accurate to the best of my knowledge, information, and belief.



John F. Dunn

Subscribed and sworn to
Before me this 7th day of March, 2015

My commission expires: 7/7/15

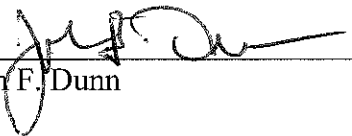


Notary Public



CERTIFICATE OF SERVICE

I, John F. Dunn, an attorney for Commonwealth Edison Company, hereby certify that a copy of the foregoing *Verified Initial Comments of Commonwealth Edison Company* was filed on the Illinois Commerce Commission's e-docket and was served electronically to all parties of record in this docket on this 9th day of March, 2015.



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